

**Tuesday, August 19, 2008**

The Board met at its offices at 450 N Street, Sacramento, at 9:40 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

**Devry, Inc., 357029**

1998, \$100,038.00 Claim for Refund

1999, \$121,585.00 Claim for Refund

2000, \$132,898.00 Claim for Refund

2001, \$185,826.00 Claim for Refund

For Appellant:

Marty Dakessian, Attorney

Jon A. Sperring, Representative

LaShelle Wilson, Representative

Reed Schreiter, Representative

For Franchise Tax Board:

Ann Hodges, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated that it is entitled to the claimed Enterprise Zone Hiring Credits.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**James F. Montgomery and Diane Montgomery, 309423**

1996, \$206,706.00 Assessment

1997, \$2,530,277.00 Assessment

1998, \$203,228.00 Assessment

1999, \$144,762.00 Assessment

For Appellant:

James Montgomery, Taxpayer

Charles Moll III, Attorney

For Franchise Tax Board:

John Penfield, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Franchise Tax Board correctly determined that appellants were residents of California during the years covered by this appeal.

Whether an appropriate portion of Mr. Montgomery's stock option income was sourced to California.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Tuesday, August 19, 2008

Dennis A. Adams and Sandra E. Adams, 423981

2003, \$1,409.00 Assessment

For Appellant:

Dennis A. Adams, Taxpayer

Sandra E. Adams, Taxpayer

For Franchise Tax Board:

Irina Krasavtseva, Tax Counsel

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the board has jurisdiction to consider this appeal.

Whether appellants met their burden of proving that respondent's assessment, which was based upon federal audit adjustments, was erroneous or already paid.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.2)

Action: Mr. Leonard moved that the Board had jurisdiction to hear the appeal. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:30 p.m. and reconvened at 1:35 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

David W. Sanders and Mary E. Raigosa, 400374

2002, \$4,884.34 Assessment

For Appellant:

David Sanders, Taxpayer

Mary Raigosa, Taxpayer

Laura Lee George, Representative

For Franchise Tax Board:

Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants resided within or without Indian Country during the year at issue.

If appellants resided within Indian Country, whether California may tax the income of an Indian who is not a member of the government tribe.

If appellants resided within Indian Country, whether California may tax income earned from a non-tribal source.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.3)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Tuesday, August 19, 2008**

Helmut D. Mees and Rebecca Mees, 405246

2002, \$33,848.00 Tax, \$1,304.45 Post-Amnesty Penalty

2003, \$6,258.00 Tax

2004, \$4,002.00 Tax

For Appellant:

Giovanni Bellini, Accountant

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown they incurred Schedule C business expenses during 2002, 2003, and 2004, for their sole proprietor auto repair and sales business.

Whether the Board has jurisdiction over the post-amnesty penalty for 2002.

Respondent's Exhibit: Summary of Schedule C (Exhibit 8.4)

Action: The Board deferred the matter to later in the day.

### **SALES AND USE TAX APPEALS HEARINGS**

Abbas Hussain, 396500 (GH)

4-1-02 to 6-30-02, \$47,188.55 Tax, \$6,608.00 Late Filing Penalty

For Petitioner:

Abbas Hussain, Taxpayer

James Speed, Representative

Lawrence Jacobson, Attorney

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Creditmasters, LLC for the period April 2, 2002, through June 30, 2002, pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause to relieve the late filing penalty originally assessed against Creditmasters, LLC.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, and Ms. Steel voting yes, Ms. Mandel absent, the Board ordered that the petition be submitted for decision.

Gordon Randall Bingham, 397938 (KH)

4-1-01 to 3-31-02, \$56,296.34 Tax, \$7,199.20 Penalty

For Petitioner:

Gordon R. Bingham, Taxpayer

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable as a responsible person for the tax liabilities of BHM Enterprises, Inc.

Whether petitioner has established reasonable cause to relieve the penalties originally assessed against BHM Enterprises, Inc.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, August 19, 2008

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Helmut D. Mees and Rebecca Mees, 405246 (Continued from earlier in the day)

2002, \$33,848.00 Tax, \$1,304.45 Post-Amnesty Penalty

2003, \$6,258.00 Tax

2004, \$4,002.00 Tax

For Appellant:

Giovanni Bellini, Accountant

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown they incurred Schedule C business expenses during 2002, 2003, and 2004, for their sole proprietor auto repair and sales business.

Whether the Board has jurisdiction over the post-amnesty penalty for 2002.

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *The Customer Company, 113119 (JH)*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

**The Customer Company, 113119 (JH)**

4-5-97 to 3-31-00, \$46,082.70 Tax, \$19,771.33 Amnesty Interest Penalty

Action: The Board took no action.

**The Auto Store of Merced, Inc., 168200 (KH)**

7-1-98 to 6-30-01, \$805,779.48 Tax, \$80,577.97 Penalty, \$182,594.10 Amnesty Interest Penalty

Action: Redetermined as recommended by the Appeals Division, otherwise deny the petition for rehearing.

**Anita Maltoni, 295968 (BH)**

7-1-00 to 1-31-01, \$10,885.00 Tax, \$1,420.30 Late Payment Penalty, \$2,119.00 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

**Karim Zuhair Bustami, 339131 (BH)**

1-1-02 to 12-31-04, \$13,569.76 Tax, \$0.00 Negligence Penalties, \$617.28 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Tuesday, August 19, 2008

HK Systems, Inc., 299485 (OH)

1-1-00 to 12-31-02, \$32,538.93 Tax, \$3,516.79 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Lacerta Enterprises, Inc., 138602, 313098 (OH)

4-1-93 to 6-30-01, \$45,250.23 Tax, \$0.00 Penalty, \$11,363.86 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Brown's Market, Inc., 443075 (ET)

January 16, 2008, \$1,053.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Pacific Biokinetics Corporation, 397694

2003, \$1,339.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sueann E. Sherry and Robert L. Shaw (Deceased), 379689

2001, \$3,190.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Pamela Frye, 374537

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Martin Anthoney Herrera, 394484

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Alphonso Scott, 424266

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Tuesday, August 19, 2008

Patricia A. Williams, 389597

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES  
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Modtech, Inc., 418661 (EH)

4-1-03 to 3-31-06, \$672,171.15

Action: Approve the redetermination as recommended by staff.

Fieldturf International, Inc., 416633 (OH)

4-1-03 to 3-31-06, \$55,038.28

Action: Approve the redetermination as recommended by staff.

Bebe Stores, Inc., 444078 (BH)

7-1-07 to 9-30-07, \$118,484.50

Action: Approve the relief of penalty as recommended by staff.

United Aviation Fuels Corp., 447811 (OH)

2-1-08 to 2-29-08, \$434,583.96

Action: Approve the relief of penalty as recommended by staff.

Hughes Markets, Inc., 446510 (AA)

2-3-08 to 3-1-08, \$72,300.00

Action: Approve the relief of penalty as recommended by staff.

DVDPlay, Inc., 447840 (GH)

1-1-07 to 12-31-07, \$56,635.00

Action: Approve the relief of penalty as recommended by staff.

Avalon Eyewear, Inc., 447328 (OH)

4-1-00 to 12-31-06, \$59,629.54

Action: Approve the relief of penalty as recommended by staff.

Steve &amp; Barry's California, LLC, 447311 (OH)

10-1-07 to 12-31-07, \$58,952.40

Action: Approve the relief of penalty as recommended by staff.

Tuesday, August 19, 2008

GTE.Net, LLC, 446488 (OH)

10-1-07 to 12-31-07, \$75,384.10

Action: Approve the relief of penalty as recommended by staff.

ACC Consumer Finance, LLC, 447757 (FH)

10-1-05 to 6-30-06, \$112,842.38

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *Gottschalks, Inc., 441170 (KH)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *CIM/H&H Hotel, LP, 447161 (AS)*; and, in accordance with Government Code section 87105 not participating in *Chevrolet Motor Division, 446016 (OH)*, the Board made the following orders:

The Legacy Estates Group, LLC, 447382 (JH)

11-01-05 to 11-30-05, \$209,533.81

Action: Approve the credit and cancellation as recommended by staff.

Alegria C. Phankonsy, 447536, (EH)

1-1-02 to 12-31-03, \$106,937.84

Action: Approve the credit and cancellation as recommended by staff.

CIM/H&amp;H Hotel, LP, 447161 (AS)

10-6-07 to 12-28-07, \$83,962.10

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating.

Kevork Ohannes Aposhian, 447324 (AC)

1-1-07 to 9-30-07, \$65,610.13

Action: Approve the credit and cancellation as recommended by staff.

Cibola Systems Corporation, 445632 (EA)

4-1-04 to 3-31-07, \$72,729.89

Action: Approve the refund as recommended by staff.

Oakley, Inc., 446457 (EA)

10-1-05 to 6-30-07, \$440,776.90

Action: Approve the refund as recommended by staff.

Tuesday, August 19, 2008

Chevron U.S.A., Inc., 446158 (BH)

10-1-01 to 6-30-06, \$4,547,935.33

Action: Approve the refund as recommended by staff.

Investor's Business Daily, Inc., 447785 (AS)

4-1-04 to 3-31-07, \$52,999.86

Action: Approve the refund as recommended by staff.

Gottschalks, Inc., 441170 (KH)

7-6-03 to 7-7-07, \$422,848.93

Action: The Board took no action.

Toshiba America Info.Sys., Inc., 395952 (EA)

1-1-03 to 6-30-07, \$289,067.83

Action: Approve the refund as recommended by staff.

Coherent, Inc., 349725 (GH)

10-1-02 to 6-30-06, \$58,100.91

Action: Approve the refund as recommended by staff.

Bel Air Mart, 306014 (JH)

7-1-01 to 9-18-04, \$67,352.76

Action: Approve the refund as recommended by staff.

Barbosa Cabinets, Inc., 393424 (KH)

4-1-04 to 3-31-07, \$356,641.79

Action: Approve the refund as recommended by staff.

The Glidden Company, 351321 (OH)

7-1-04 to 6-30-07, \$319,221.70

Action: Approve the refund as recommended by staff.

Ford Motor Company, 446014 (OH)

8-28-07 to 3-10-08, \$424,521.15

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 446016 (OH)

10-18-07 to 4-22-08, \$548,506.15

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Motel 6 Operating, LP, 443732 (OH)

10-1-03 to 12-31-06, \$267,508.85

Action: Approve the refund as recommended by staff.

**Tuesday, August 19, 2008**

Trellis Systems Corporation, 436330 (GH)

1-1-04 to 12-31-06, \$51,242.68

Action: Approve the refund as recommended by staff.

Bazooka, Inc., 446458 (EA)

10-1-05 to 6-30-07, \$122,513.02

Action: Approve the refund as recommended by staff.

Oakley Sales Corp., 446459 (EA)

10-1-05 to 6-30-07, \$71,951.11

Action: Approve the refund as recommended by staff.

Raley's, 306122 (JH)

7-1-01 to 9-18-04, \$226,758.33

Action: Approve the refund as recommended by staff.

Northrop Grumman Guidance and Electronics Co, Inc., 441180 (AC)

7-1-02 to 12-31-05, \$437,621.03

Action: Approve the refund as recommended by staff.

Ford Motor Credit Company, 442176 (OH)

7-1-07 to 9-30-07, \$1,753,607.94

Action: Approve the refund as recommended by staff.

Brinker Restaurant Corporation, 445767 (OH)

10-1-99 to 9-30-02, \$325,447.82

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 435154 (OH)

10-1-07 to 12-31-07, \$1,658,367.26

Action: Approve the refund as recommended by staff.

General Chemical Performance Products, LLC, 347467 (OH)

7-1-05 to 12-31-05, \$130,722.42

Action: Approve the refund as recommended by staff.

ACC Consumer Finance, LLC, 340424 (FH)

10-1-04 to 12-31-06, \$937,345.50

Action: Approve the refund as recommended by staff.

Financial Partners Credit Union, 404544 (AA)

7-1-05 to 6-30-06, \$63,522.78

Action: Approve the refund as recommended by staff.

Tuesday, August 19, 2008

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

**Equilon Enterprises, LLC, 400598 (MT)**

12-1-06 to 1-31-07, \$286,444.24

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**State Compensation Insurance Fund, 384552 (ET)**

1-1-03 to 12-31-05, \$4,825,064.31

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**John Hancock Life Insurance Company, 442045 (ET)**

1-1-04 to 12-31-04, \$1,104,881.24

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**John Hancock Variable Life Insurance Co., 442047 (ET)**

1-1-04 to 12-31-04, \$167,128.18

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**United Concordia Insurance Co., 448725 (ET)**

5-1-08 to 5-31-08, \$318,218.86

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**MetLife Investors Insurance Co., 448977 (ET)**

1-1-07 to 3-31-08, \$2,706,669.29

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Speaker: Michael Richard Luna

**Michael Richard Luna, 356507 (KH)**

1-1-02 to 12-31-04, \$8,964.74 Tax

Considered by the Board: March 18, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Tuesday, August 19, 2008**

Action: The Board postponed this matter to the next Board meeting.

**Hyundai Motor America, 331894 (EA)**

4-1-99 to 3-31-02, \$24,196.00 Claim for Refund

Considered by the Board: February 26, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim be granted as recommended by the Appeals Division.

**Marcella Maria Rosales, 308469 (KH)**

1-1-03 to 11-17-03, \$951.00 Tax, \$95.10 Failure to File Penalty

Considered by the Board: July 17, 2007

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Mr. Leonard moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee, and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

**Terry N. Black, 355231**

1997, \$60,305.00 Tax, \$42,213.50 Penalties, \$90.00 Filing Enforcement Fee

Considered by the Board: June 24, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**Sandras Clark, 355234**

1998, \$71,579.00 Tax, \$32,210.55 Penalties

1999, \$19,529.00 Tax, \$8,788.05 Penalties

Considered by the Board: June 24, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

**Jill R. Usher, 360378**

1998, \$7,984.61 Claim for Refund

Considered by the Board: Presented for Separate Discussion

Tuesday, August 19, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Robin J. Steele, 342595

2003, \$7,317.25 Notice and Demand Penalty

Considered by the Board: June 24, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Leonard moved that the Board find it has jurisdiction to decide the appeal and adopt a decision sustaining the action of the Franchise Tax Board. The motion failed for lack of a second.

Amy Kelly, Tax Counsel, Legal Appeals Section, noted that it was previously stated erroneously that the Board had no jurisdiction and that it was corrected in the hearing summary.

Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

#### **SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY**

Mr. Leonard stated that he would not participate in the matter of *Paramount Pictures Corporation, 446159 (AS)*, in accordance with Government Code section 15626, and left the Boardroom.

Paramount Pictures Corporation, 446159 (AS)

7-1-00 to 9-30-03, \$54,834.93

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Leonard. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board approved the relief of penalty as recommended by staff.

Mr. Leonard returned to the Boardroom.

#### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Chevron U.S.A., Inc., 156080 (BH)

1-1-96 to 9-30-01, \$7,702,016.60

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

**Tuesday, August 19, 2008**

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, ADJUDICATORY**

Conco Paint Company, 346956 (MT)

1-1-05 to 12-31-05, \$81,338.92

Considered by the Board: May 13, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the redetermination as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Conco Paint Company, 435335 (MT)

1-1-06 to 12-31-06, \$107,284.99

Considered by the Board: May 13, 2008

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Natalie Cintas-Gladnick*; *Sheolly Lynell Woolridge*; *Pablo G. Alfero*; and, *Rodolfo Suarez and Mercedes Suarez*; as recommended by staff.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 19, 2008**

Devry, Inc., 357029

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Tuesday, August 19, 2008

James F. Montgomery and Diane Montgomery, 309423

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu voting no, the Board reversed the action of the Franchise Tax Board and modified the calculations to show residency in California ended on May 9, 1996.

Mr. Leonard directed staff to review and brief the Board on the requirements of a Taxpayer who abandons California; i.e., must he/she establish a domicile somewhere else and must it be in one location.

Dennis A. Adams and Sandra E. Adams, 423981

Final Action: Mr. Leonard moved that the Board sustain the action of the Franchise Tax Board. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board dismissed the petition for lack of jurisdiction, otherwise sustained the action of the Franchise Tax Board. The Franchise Tax Board was also directed to follow up with the taxpayers and offer Hardship Deferral and/or Offers in Compromise.

David W. Sanders and Mary E. Raigosa, 400374

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, and Mr. Leonard, voting yes, Ms. Steel and Ms. Mandel voting no, the Board sustained the action of the Franchise Tax Board.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Craig A. Cook, 406121

2003, \$5,283.00 Tax, \$1,320.75 Penalty

For Appellant:

Appearance Waived

Craig Cook, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the underlying tax assessment.

Whether appellant has shown reasonable cause for the abatement of the late filing penalty.

Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
AUGUST 19, 2008**

Abbas Hussain, 396500 (GH)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, and Mr. Leonard, voting yes, Ms. Steel voting no, Ms. Mandel not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Tuesday, August 19, 2008**

Gordon Randall Bingham, 397938 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board directed staff to continue collection against the other responsible party before proceeding against petitioner.

The Board adjourned at 3:30 p.m.

*The foregoing minutes are adopted by the Board on November 13, 2008.*

Note: The following matter was removed from the calendar prior to the meeting: *Yu Hee Kim, 401345.*